IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.4658 of 2006
to
FIRST APPEAL No.4664 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
MAGANBHAI SHANKARBHAI & 1 - Respondent(s)

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Appearance:
MS KRINA P.CALLA, AGP for the Appellant

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 29/11/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated October 1, 2003, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) in Land Acquisition Case No.76/2000 with Land Acquisition Case Nos.80/2000 to 85/2000, by which, the claimants have been awarded additional compensation at the rate of Rs.13/- per sq.mt. for their acquired lands over and above the amount of compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.20 ps. per sq.mt., by his award dated January 29, 1996.

2. The Executive Engineer, Narmada Yojna, Division No.4/8, Kadi, proposed to the State Government to acquire the lands of village Valana, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of village Valana were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on October 16, 1993. The land owners were thereafter served with notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State

Government was satisfied that the lands of village Valana, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on March 30, 1994. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated January 29, 1996, offered compensation to the claimants at the rate of Rs.1.20 ps. per sq.mt. The claimants were of the opinion that

the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R), where they were registered as Land Acquisition Case No.76/2000 with Land Acquisition Case Nos.80/2000 to 85/2000.

3. On behalf of the claimants, witness Jhaverbhai Kanjibhai Patel was examined at Ex.24. Apart from mentioning that the lands acquired were highly fertile and that each claimant was earning the net income of Rs.15,000/- per Vigha per year from the sale of different

agricultural produces, the witness produced the previous award of the Reference Court relating to the lands of this very village at Ex.23 in support of the claim of the claimants for enhanced compensation. The witness mentioned in his testimony that the lands which were previously acquired from this village were similar to the lands acquired in the instant case.

Though this witness was cross-examined at length on behalf of the appellant, the assertion made by the witness that the lands which were previously acquired from this village were similar to the lands acquired in the instant case could not be demonstrated to be untrue.

4. On behalf of the appellant, neither any witness was examined nor any documents were produced for consideration of the Court.

5. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village produced at Ex.23 was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. After considering Ex.23, the Reference Court deduced that the claimants would be entitled to get compensation at the rate of Rs.12/- per sq.mt. The Reference Court further found that there was time-gap of about one year and two months between publication of notifications issued under Section 4(1) of the Act in two cases and therefore, the claimants would also be entitled to reasonable rise in price of lands at the rate of 10% p.a. In the ultimate analysis, the Reference Court has held that the

claimants would be entitled to get additional compensation at the rate of Rs.13/- per sq.mt. by the impugned award, giving rise to these Appeals.

6. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader for the appellant and considered the documents produced by the learned Assistant Government Pleader for perusal of the Court.

7. Though the assertion made by the witness for the claimants that each claimant was earning the net agricultural income of Rs.15,000/- per Vigha per year form the sale of agricultural produces could not be made good, there is no manner of doubt that the lands acquired were highly fertile and that the claimants were able to raise different crops thereon. The record does not indicate that the claimants had claimed enhanced

compensation on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village. Exhibit 23 indicates that the lands of village Valana were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4 of the Act in the official gazette on August 27, 1992. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.1.12 ps. per sq.mt. Feeling aggrieved, the claimant had sought Reference and the Reference Court, in all awarded compensation to the claimant at the rate of Rs.13.12 ps. per sq.mt. As observed earlier, the assertion made by the witness for the claimants that the lands previously acquired were similar

in all respects to the lands acquired in the instant case has almost gone unchallenged. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of this very village for the purpose of ascertaining the market value of the lands acquired in the instant case. It is well settled that the previous award of the Reference Court, which has attained finality, can be taken into consideration and relied upon as a good piece of evidence for the purpose of ascertaining the market value of similar lands subsequently acquired from the said village. While discussing Issues No.1 to 3, the Reference Court has observed that the previous award of the Reference Court relating to the lands of this village was confirmed by the High Court. Thus, the previous

award of the Reference Court relating to the lands of this village has attained finality. It is to be noted that in the previous case, notification issued under Section 4(1) of the Act was published in the official gazette on August 27, 1992, whereas in the instant case, it was published in the official gazette on October 16, 1993 and in view of the time-gap of about one year and two months, the Reference Court was justified in granting the benefit of rise in price of lands to the claimants at the rate of 10% p.a. Thus, the finding recorded by the Reference Court that the claimants are entitled to additional compensation at the rate of Rs.13/- per sq.mt. is perfectly just.

8. On re-appreciation of evidence adduced by the claimants, this Court finds that correct findings of facts have been

recorded by the Reference Court to which well settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence. Therefore, the Appeals which lack merits, deserve to be dismissed.

9. For the foregoing reasons, all the Appeals fail and are dismissed. The Registry is directed to draw decree in terms of this judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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